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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

L&J ASSETS, LLC,

Plaintiff and Respondent,

v.

JOSE N. VASQUEZ,

Defendant and Appellant.

B217142

(Los Angeles County
Super. Ct. No. BC 335710)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Kenneth Freeman, Judge. Affirmed.

Henry W. Bockman for Defendant and Appellant.

Law Offices of John Levine and John Levine for Plaintiff and Respondent.

In the underlying action, respondent L&J Assets, LLC (L&J) sued appellant Jose N. Vasquez, alleging that he had failed to pay credit card debt originally owed to Citibank (South Dakota), N.A. (Citibank). Vasquez contended that L&J failed to establish its standing to sue as an assignee of Citibank's rights. The trial court, sitting as trier of fact, entered a judgment in L&J's favor. We affirm.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Pretrial Proceedings

L&J's complaint, filed June 17, 2005, asserted claims for breach of contract and an account stated against Vasquez. The complaint alleged that Vasquez owed \$27,751.22 in principal and accrued interest under a written agreement with Citibank, which the complaint identified as "[L&J's] assignor." In October 2005, after Vasquez failed to answer the complaint, L&J sought a default judgment. In support of the request for a default judgment, L&J submitted a declaration from Christopher Curry, an L&J manager, who stated that Vasquez had incurred the debt in connection with a Citibank credit card (account no. 5424180125687894).

Accompanying Curry's declaration was a document entitled "Affidavit and Assignment" dated August 19, 2005 and executed by Kim Kenney, a manager of Unifund CCR Partners (Unifund), an Ohio business. In the document (Unifund affidavit), Kenney affirmed under oath that "Jose N. Vasquez, Acct. #5424180125687894" owed \$18,250.20 as of September 18, 2003, plus accrued interest, "[b]y the terms of the agreement between the defendant and the original creditor." Kenney further stated: "Said agreement is hereby assigned, transferred and set over unto [L&J] with full power and authority to do so and perform all acts necessary for the collection, settlement, adjustment, compromise or satisfaction of said claim. . . . [Unifund] acknowledges that in making this assignment, the

assignor has made a complete assignment of said debt and that [L&J] is now the owner thereof”

A default judgment was entered against Vasquez, but was later vacated.

B. Trial and Judgment

On April 7, 2009, at the beginning of the bench trial on L&J’s complaint, Vasquez filed a motion to dismiss the action on jurisdictional grounds. Noting that the Unifund affidavit appeared to effectuate an assignment but was executed *after* L&J initiated its action, Vasquez contended that L&J lacked standing to assert its claims when it filed the complaint. Vasquez also maintained that L&J could not cure the defect in the original complaint by filing a new complaint, arguing that the limitations period for L&J’s claims elapsed in March 2007. The trial court deferred ruling on the motion pending the presentation of evidence at trial.

L&J’s sole witness was Mark Meador, an acting director for L&J’s business affairs. Meador testified that L&J acquires foreclosure properties, nonperforming loans, and credit card accounts in default, and attempts to collect on them. Credit card accounts are purchased in pools consisting of 100 to 1,000 accounts. According to Meador, in March 2005, L&J bought the rights to Vasquez’s credit card account from Unifund, which had previously purchased the rights from Citibank. Vasquez’s account was included in a pool of accounts that L&J obtained from Unifund.

When asked why L&J filed its complaint before the Unifund affidavit was executed, Meador responded as follows: “. . . It’s very typical. . . . [W]hen we acquire a pool of accounts, there may be hundreds of those accounts, many of them we choose not to initiate litigation. And once we decide to initiate litigation

on a particular account, we then request that the assignor provide us with documentation that confirms that we have the account. And . . . we receive that documentation many times after the lawsuit started.”

Meador also testified that Unifund provided L&J with several documents regarding the credit card account at issue, aside from the Unifund affidavit. Unifund supplied a document entitled “Bill of Sale, Assignment and Assumption Agreement” concerning a transaction between Citibank and Unifund (Citibank assignment). The Citibank assignment, dated August 28, 2003, states that pursuant to a certain purchase and sale agreement (no copy of which is found in the record), Citibank assigned to Unifund the rights to the accounts “defined” in the purchase and sale agreement. The Citibank assignment does not expressly mention or refer to Vasquez’s account.

Unifund also provided L&J with copies of Citibank’s monthly statements regarding the credit card account number 5424180125687894, as well as the Citibank agreement regarding the account. The statements identify the account holder as “Jose N. Vasquez,” and state his address as 9961 Vena Avenue in Pacoima. Over Vasquez’s objections, the trial court admitted the Unifund affidavit, the Citibank assignment, and the Citibank records.

Vasquez testified on his own behalf. According to Vasquez, he had lived for 48 years at 9961 Vena Avenue in Arleta. Vasquez denied that he had a Citibank credit card account; in addition, he denied that he ever received monthly statements showing a balance due on the account in question.

Following the presentation of evidence, the trial court found that Vasquez possessed the credit card and owed the balance due plus accrued interest. The trial court concluded that Vasquez’s testimony was “intentionally deceptive,” noting that the Citibank statements showed payments at the location of Vasquez’s doctor,

and that the address on the Citibank statements was identical to the address on Vasquez's medical card, which Vasquez displayed during trial. On May 11, 2009, a judgment was entered in L&J's favor for \$28,278.12 in damages and accrued contractual interest, \$6,950.07 in statutory interest, and \$5,106.28 in costs. This appeal followed.

DISCUSSION

Vasquez maintains that the trial court lacked jurisdiction over the complaint because L&J had no standing to assert its claims against him. He contends there is insufficient evidence that Citibank's rights regarding the credit card debt were ever assigned to Unifund; in addition, he contends that because Unifund allegedly assigned its purported rights regarding the debt to L&J after L&J filed its complaint, L&J lacked standing to assert its claims when it filed the complaint. For the reasons explained below, we reject both contentions.

A. Governing Principles

Generally, "[t]o 'assign' ordinarily means to transfer title or ownership of property [citation], but an assignment, to be effective, must include manifestation to another person by the owner of his intention to transfer the right, without further action, to such other person or to a third person. [Citation.] It is the substance and not the form of a transaction which determines whether an assignment was intended. [Citations.] If from the entire transaction and the conduct of the parties it clearly appears that the intent of the parties was to pass title to the chose in action, then an assignment will be held to have taken place. [Citations.]" (*McCown v. Spencer* (1970) 8 Cal.App.3d 216, 225.) As our Supreme Court recently explained: "An assignment requires very little by way of

formalities and is essentially free from substantive restrictions. ‘[I]n the absence of [a] statute or a contract provision to the contrary, there are no prescribed formalities that must be observed to make an effective assignment. It is sufficient if the assignor has, in some fashion, manifested an intention to make a present transfer of his rights to the assignee.’ [Citations.] Generally, interests may be assigned orally [citations], and assignments need not be supported by any consideration [citations].” (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1002, quoting 9 Corbin on Contracts (rev. ed. 2007) § 47.7, pp. 147-148.)

Here, the key issues concern the adequacy of L&J’s showing that it had been assigned Citibank’s rights to the credit card account in question prior to the date L&J filed the complaint. Generally, “[t]he burden of providing an assignment falls upon the party asserting rights thereunder.” (*Cockerell v. Title Ins. & Trust Co.* (1954) 42 Cal.2d 284, 292.) To carry this burden, L&J was obliged to present “clear and positive” evidence sufficient to protect Vasquez from claims by any other purported holder of the rights to the debt. (*Ibid.*) Accordingly under the circumstances of this case, L&J was required to show that Citibank assigned its rights to Unifund, and that Unifund later assigned the rights to L&J. (*Colville v. Koch* (9th Cir. 1956) 234 F.2d 157, 161.) Moreover, L&J was obligated to prove that the assignment from Unifund occurred before L&J filed its complaint. (See *Read v. Buffum* (1889) 79 Cal. 77, 81-82 [plaintiff could not recover on claims based on ineffective assignment from corporation, notwithstanding corporation’s ratification of assignment after plaintiff initiated his action].)

Although Vasquez challenged L&J’s status as assignee during the underlying proceedings, the trial court rendered judgment in L&J’s favor without stating express findings on this matter. As no statement of decision was requested,

we assume that the trial court made the requisite findings (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793), and examine them for the existence of substantial evidence (*Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1288-1292). On review for substantial evidence, “all of the evidence must be examined, but it is not weighed. All of the evidence most favorable to the respondent must be accepted as true, and that unfavorable discarded as not having sufficient verity[] to be accepted by the trier of fact. If the evidence so viewed is sufficient as a matter of law, the judgment must be affirmed.” (*Estate of Teel* (1944) 25 Cal.2d 520, 527.)¹

B. Analysis

Our inquiry into Vasquez’s challenges on appeal has a narrow focus. Although Vasquez’s briefs note that he objected to the documents and testimony admitted at trial bearing on L&J’s status as assignee, the briefs present no

¹ Our inquiry follows established principles of review for substantial evidence. Generally, factual findings are examined for the existence of substantial evidence, regardless of whether the party seeking to establish the findings was obliged to prove them by the preponderance of the evidence or by clear and convincing evidence. (See *Shupe v. Nelson* (1967) 254 Cal.App.2d 693, 700.) “Substantial evidence” is not “synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value’ [Citation.]” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) However, “the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of the trier of fact], and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the [trier of fact].” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, italics omitted.) Finally, “in all cases, the determination whether there was substantial evidence to support a finding or judgment must be based on the whole record. The reviewing court may not consider only supporting evidence in isolation, disregarding all contradictory evidence.” (*Rivard v. Board of Pension Commissioners* (1985) 164 Cal.App.3d 405, 412.)

argument that the trial court erred in admitting the evidence. Vasquez contends only that “[i]f the documents speak for themselves, as they must,” L&J failed to show that it had been assigned Citibank’s rights. He has thus forfeited all evidentiary objections to the evidence. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 844, fn. 3.) Accordingly, we limit our inquiry to whether the evidence admitted at trial establishes L&J’s status as assignee.

We find guidance concerning the quantum of evidence sufficient to carry L&J’s burden in *Marx v. McKinney* (1943) 23 Cal.2d 439 (*Marx*) and *Norton v. Consolidated Fisheries, Inc.* (1953) 120 Cal.App.2d 86 (*Norton*). In *Marx*, the plaintiff sued the defendant for money had and received, alleging that she was the assignee of a debt incurred by the defendant. (*Marx, supra*, 23 Cal.2d at p. 440.) After the trial court entered a judgment in the plaintiff’s favor, our Supreme Court determined that there was no evidence of the assignment in the record, and remanded the matter for an evidentiary hearing before the trial court on the existence of the assignment. (*Id.* at p. 443.) At a subsequent hearing, the plaintiff produced a written assignment, which was admitted into evidence. (*Ibid.*) The Supreme Court held that the writing was sufficient to establish the assignment. (*Ibid.*)

In *Norton*, the plaintiff sued a fish wholesaler, alleging that she was the assignee of funds that the wholesaler owed to several commercial fishermen. (*Norton, supra*, 120 Cal.App.2d at pp. 87-88.) The wholesaler denied the existence of the assignments, and maintained that the fishermen had assigned their rights to a different party. (*Ibid.*) During the bench trial on the plaintiff’s claims, the sole evidence supporting the plaintiff’s claim came from the plaintiff herself, who testified that the fishermen made oral assignments to her. (*Id.* at pp. 89-90.)

In affirming the judgment in the plaintiff's favor, the appellate court rejected the contention that the plaintiff's testimony was insufficient to establish her assignments: "Appellant has supplied no authority holding that an assignee is not a competent witness to prove an assignment, and we doubt if such authority can be found. Moreover, '[t]he direct evidence of one witness who is entitled to full credit is sufficient . . . ' [Citation.] No corroboration is required in a case such as this. [Citation.] The trial judge was not required to accept the plaintiff's testimony as true [citations], but the fact remains that he did so." (*Id.* at p. 90, quoting former Code of Civ. Proc. § 1844, now codified as Evid. Code § 411.)

Marx and *Norton* demonstrate that evidence supplied by the assignee -- whether documentary or testimonial -- may suffice to establish the assignment. Here, there was evidence of both kinds from L&J as Unifund's assignee, and from Unifund as Citibank's assignee. Regarding the assignment from Unifund to L&J, Meador testified that L&J bought the rights to Vasquez's account from Unifund in March 2005 -- prior to the filing of the complaint -- and later obtained the Unifund affidavit in August 2005 to corroborate L&J's claims at trial. This testimony is sufficient to support the trial court's implied finding that Unifund assigned its rights to L&J *before* L&J filed the complaint.

Regarding the assignment from Citibank to Unifund, the trial court admitted the Unifund affidavit from Kenney, Unifund's manager, and the Citibank assignment, which concerned Citibank's transfer of the rights to unspecified accounts to Unifund in August 2003; in addition, the trial court heard testimony from Meador that Citibank transferred its records for Vasquez's account to Unifund. In the Unifund affidavit, Kenney affirmed under oath that Unifund possessed the rights to Vasquez's account. As Kenney's statements amount to testimony from Unifund as Citibank's assignee, the Unifund affidavit, taken

together with the Citibank assignment and the evidence regarding the transfer of Citibank's records, support the reasonable inference that Citibank assigned Vasquez's account to Unifund in August 2003.²

Vasquez contends that L&J's showing was inadequate as a matter of law to establish an assignment sufficient to support its claims. He argues that L&J's status as assignee must be resolved *solely* by reference to the Unifund affidavit and Citibank assignment. Noting that the Unifund affidavit appears to assign Vasquez's account to L&J after the complaint was filed and that the Citibank assignment does not specify the accounts it involves, Vasquez maintains that L&J's showing is fatally defective.

This contention fails, as its key assumption is mistaken. In determining the existence and character of the assignments between Citibank, Unifund, and L&J, the trial court was permitted to interpret the Unifund affidavit and Citibank assignment in light of the extrinsic evidence admitted at trial. In *Wells v. Wells* (1946) 74 Cal.App.2d 449, 450-451, a married couple undergoing a divorce executed a document whose express terms purported to assign a portion of the husband's future income to the wife. The appellate court concluded that the document, viewed in light of the available extrinsic evidence, was actually a separation agreement inartfully framed as an assignment. (*Id.* at pp. 456-459.) Again, in *Mission Valley East, Inc. v. County of Kern* (1981) 120 Cal.App.3d 89, 97-100, the appellate court held that it was proper to consider extrinsic evidence to

² On a related matter, Vasquez suggests that there is no evidence that he ever entered into a credit card agreement with Citibank. We disagree. As the trial court noted, the name and address on the Citibank account statements are identical to the name and address that Vasquez admitted at trial, and the statements reflect credit card payments at the location of Vasquez's doctor. In addition, the statements disclose a payment at a restaurant where Vasquez admitted frequenting.

resolve whether an ambiguously written assignment encompassed a particular item of property. Here, Meador's testimony supports the reasonable inference that the Unifund affidavit was intended to provide evidence of a pre-existing assignment, rather than to effectuate the assignment; moreover, the evidence admitted at trial supports the reasonable inference that the Citibank assignment encompassed Vasquez's account.

Vasquez also contends that L&J failed to show that the individual who executed the Citibank assignment on Citibank's behalf had the authority to do so. We disagree. An agent's authority to bind his or her principal may be created in several ways. (3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency and Employment, § 130, p. 175.) Pertinent here is ostensible authority, which arises when the declarations or other conduct of the principal "causes the third party reasonably to believe that the agent possesses the authority to act on the principal's behalf." (Petersen v. Securities Settlement Corp. (1991) 226 Cal.App.3d 1445, 1452, quoting *Kamen & Co. v. Paul H. Aschkar & Company* (9th Cir. 1976) 382 F.2d 689, 695, italics omitted.) "Whether ostensible agency exists ' . . . is a question of fact . . . and may be implied from circumstances. [Citation.]'" (*Kaplan v. Coldwell Banker Residential Affiliates, Inc.* (1997) 59 Cal.App.4th 741, 748, quoting *Yanchor v. Kagan* (1971) 22 Cal.App.3d 544, 550.)

Aside from submitting the Citibank assignment, L&J presented ample evidence that Citibank knew about the transfer of Vasquez's account to Unifund and approved it. Meador testified that in connection with the transfer, Citibank forwarded its records for Vasquez's account to Unifund, in addition, he testified that when L&J attempted to subpoena the records from Citibank for use in the underlying litigation, Citibank referred L&J to Unifund, which supplied the records to L&J. In our view, this evidence regarding Citibank's conduct is

sufficient to establish that the person who executed the Citibank assignment on Citibank's behalf was authorized to do so.

Vasquez's reliance upon *Cockerell v. Title Ins. & Trust Co.*, *supra*, 42 Cal.2d 284, *Neptune Society Corp. v. Longanecker* (1987) 194 Cal.App.3d 1233, *Bengel v. Kenney* (1932) 126 Cal.App. 735, and *Brown v. Ball* (1932) 123 Cal.App. 758, is misplaced. In three of these cases, the appellate court held that no assignment had been proven because the parties claiming an assignment relied solely on a written assignment signed by the assignor's alleged agent, and made no showing that the alleged agent was authorized to execute the assignment. (*Cockerell v. Title Ins. & Trust Co.*, *supra*, 42 Cal.2d at pp. 292-293 [purported assignees offered no evidence that the alleged agent had authority from assignor or that assignor was entitled to engage in transaction]; *Bengel v. Kenney*, *supra*, 126 Cal.App. at pp. 735-736 [same]; *Brown v. Ball*, *supra*, 123 Cal.App. at p. 766 [only evidence of assignments were written documents executed by alleged agent and transmitted by mail].) In the remaining case, the appellate court affirmed the trial court's finding that there was no valid assignment, noting that the evidence at trial established that the alleged agent did not, in fact, have the authority to act on the assignor's behalf. (*Neptune Society Corp. v. Longanecker*, *supra*, 194 Cal.App.3d at pp. 1242-1243.) In contrast, as explained above, L&J submitted sufficient evidence that Citibank authorized the assignment. In sum, the trial court properly determined that L&J had standing to assert its claims against Vasquez as an assignee of Citibank's rights.

DISPOSITION

The judgment is affirmed. L&J is awarded its costs on appeal.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.